

§ 38.89

§ 38.89 May the Director offer the parties to a complaint the option of mediation?

Yes. The Director may offer the parties to a complaint the option of mediating the complaint. In such circumstances, the following rules apply:

(a) Mediation is voluntary; the parties must consent before the mediation process will proceed.

(b) The mediation will be conducted under guidance issued by the Director.

(c) If the parties are unable to reach resolution of the complaint through mediation, CRC will investigate and process the complaint under §§ 38.82 through 38.88.

DETERMINATIONS

§ 38.90 If a complaint is investigated, what must the Director do when the investigation is completed?

At the conclusion of the investigation of the complaint, the Director must take the following actions:

(a) Determine whether there is reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIOA or this part; and

(b) Notify the complainant, the respondent, and the grantmaking agency, in writing, of that determination.

§ 38.91 What notice must the Director issue if he or she finds reasonable cause to believe that a violation has taken place?

If the Director finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIOA or this part, he or she must issue an Initial Determination. The Initial Determination must include:

(a) The specific findings of the investigation;

(b) The corrective or remedial action that the Department proposes to the respondent, under § 38.94;

(c) The time by which the respondent must complete the corrective or remedial action;

(d) Whether it will be necessary for the respondent to enter into a written agreement under §§ 38.95 and 38.96; and

(e) The opportunity to engage in voluntary compliance negotiations.

29 CFR Subtitle A (7-1-16 Edition)

§ 38.92 What notice must the Director issue if he or she finds no reasonable cause to believe that a violation has taken place?

If the Director determines that there is no reasonable cause to believe that a violation has taken place, he or she must issue a Final Determination under § 38.100. The Final Determination represents the Department's final agency action on the complaint.

§ 38.93 What happens if the Director finds that a violation has taken place, and the recipient fails or refuses to take the corrective action listed in the Initial Determination?

Under such circumstances, the Department must take the actions described in § 38.99.

§ 38.94 What corrective or remedial actions may be imposed where, after a compliance review or complaint investigation, the Director finds a violation of the nondiscrimination and equal opportunity provisions of WIOA or this part?

(a) A Letter of Findings, Notice to Show Cause, or Initial Determination, issued under § 38.62 or §§ 38.63, 38.66, and 38.67, or § 38.91 respectively, must include the specific steps the grant applicant or recipient, as applicable, must take within a stated period of time in order to achieve voluntary compliance.

(b) Such steps must include:

(1) Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of WIOA or this part;

(2) Make whole relief where discrimination has been identified, including, as appropriate, back pay (which must not accrue from a date more than 2 years before the filing of the complaint or the initiation of a compliance review) or other monetary relief; hire or reinstatement; retroactive seniority; promotion; benefits or other services discriminatorily denied; and

(3) Such other remedial or affirmative relief as the Director deems necessary, including but not limited to outreach, recruitment and training designed to ensure equal opportunity.

(c) Monetary relief may not be paid from Federal funds.